

## Calif. Fast Food Worker Pay Deal Shows New Power Balance

By **Daniela Porat**

*Law360 (October 17, 2023, 5:49 PM EDT)* -- California's new law giving fast food workers an increased minimum wage and a voice in shaping their working conditions is a testament to an emerging rebalancing of power between workers and their employers, presaging more reforms to come, attorneys said.

Assembly Bill 1228, which Gov. Gavin Newsom signed into law in September, establishes a \$20 hourly minimum wage for fast food workers and forms a Fast Food Council with the authority to increase the wage floor and put forth proposals for the industry, including training and safety standards.

This law came about as a compromise between the Service Employees International Union and restaurant industry groups after a state court paused the implementation of a previous version until a referendum to undo the law went to voters. The challenge to the law will be taken off the ballot under the agreement between labor and business.

The fact that this push for a boosted minimum wage and improved working conditions succeeded despite challenges shows how workers are more empowered to make demands and provide input for more democratic workplaces, said Nisha Verma, a partner with management-side firm Dorsey & Whitney LLP.

"Employees want two-way communication regarding the work that they do, not just how they're paid, or what they're paid," she said. "The two-way communication between workers and [employers] seems to be here to stay. ... A compromise was reached probably because there was political will for that."

In the last few years, the tides have changed in terms of employee expectations, Verma said. There was enough public pressure to keep an increased minimum wage and a fast food council on the table.

"That might indicate a shift toward really looking at every job, no matter how long the person is doing it, no matter the reason the person is doing it, as having to have some sort of specific requirements around it," she said, "that I think perhaps the public and the government in the state of California is really not willing to waver from."

Part of what may have motivated this compromise is industry preference for a body like a council over a unionized workforce, said Rafael Nendel-Flores, a member of management-side firm Clark Hill PLC.

"In a perfect world, they prefer not to have a quasi-legislative body regulating the working conditions of

their employees," he said. "But if it's between that and being a union shop, they probably prefer the former."

The law is a big victory and shows the power of organized labor, said Mariko Yoshihara with Yoshihara Law and Policy LLC, which represents workers' rights organizations.

It will also change the discourse around minimum wage generally, she said.

"Fast food jobs have typically been regarded as 'minimum wage jobs,' so when fast food wages become significantly higher than all other minimum wage jobs, there's a compelling argument to raise the whole floor," she said.

The \$20 fast food minimum wage, which will go into effect in April 2024, will likely apply upward pressure in unrelated industries, Verma said. In January, the state minimum wage will go up to \$16 an hour.

"It's possible there's another council for another industry, or it's possible that this measure creates market effects that potentially satisfy workers and other industries, or satisfy their advocates," she said.

Garment workers are no longer paid by the piece in California after the state outlawed the practice. Health care workers will start earning \$25 an hour in 2026 after Gov. Newsom signed Senate Bill 525 on Friday.

This approach of focusing on minimum wage for specific industries may help, from a marketing and political perspective, to get public backing, Verma said.

"You're actually envisioning what those people do. You're familiar with what those people do," she said. "And it probably makes it a little bit easier to get public support."

Nendel-Flores said he doesn't see an analytical distinction between the fast food industry and another industry like retail — meaning other efforts to regulate specific industries will likely emerge.

"If you think the regulation is necessary, I'm not sure why one would think that the working conditions are necessarily better at a retail store ... if you have that kind of worldview," he said. "I don't think this is the last time that the Legislature is going to seize on an industry and think that they need extra special regulation."

--Additional reporting contributed by Irene Spezzamonte. Editing by Emma Brauer.